Filed 11/9/09 Enayati v. Enayati CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ALAEDDIN ENAYATI, Plaintiff and Respondent, v. NADJATOLLAH ENAYATI, Defendant and Appellant.	B196597 (Super. Ct. No. BC328271)
BEHROOZ FARIDIAN et al., Plaintiffs and Respondents, v. NADJATOLLAH ENAYATI et al., Defendants and Appellants.	B205050 (Super. Ct. No. BS090435)

APPEALS from judgments of the Superior Court of Los Angeles County. Edward A. Ferns and Soussan G. Bruguera, Judges. Affirmed.

Edward A. Hoffman for Defendants and Appellants Nadjatollah Enayati and Hesameddin Enayati.

Law Offices of Saul Reiss and Saul Reiss for Plaintiff and Respondent Alaeddin Enayati (Case No. B196597).

Law Offices of Ehsan Afaghi, Ehsan Afaghi, Firouzeh Simab for Plaintiffs and Respondents Behrooz Faridian, Behzad Faridian, Alaeddin Enayati, Sirous Setareh, Moin Setareh and Mahvash Rezvanipoor (Case No. B205050).

This is a consolidated appeal from two superior court cases. Both cases concern two adjoining parcels of commercial property in Los Angeles co-owned by the parties to these appeals (the Property). The first case involves an arbitration award. The second case sought to quiet title to the Property. We find no error and affirm the judgments.

Faridian v. Enayati (Super. Ct. No. BS090435/Appeal No. B205050)

By virtue of a grant deed recorded in August 1986, the parties to these appeals became co-owners of the Property.[1] Disputes arose among the co-owners. An agreement was reached in September 2003 in which the parties appointed two arbitrators to resolve their differences. The parties agreed that the arbitration award "shall be binding and of full force and effect"; further, "none of the parties shall have any right to challenge" it.

The arbitrators made their award in February 2004. Some of the parties questioned the award. This prompted the arbitrators to add a new clause to their decision, giving prevailing parties the right to recover their attorney fees in any court proceeding to enforce the award. In addition, the arbitrators corrected the award to show the co-owners' interests as 9 percent for Nadjatollah Enayati (Nadjatollah), 10 percent for Nadjatollah's wife Sorraya Faridian (Sorraya), and 6 percent for Nadjatollah's son Hesameddin Enayati (Hesameddin). Originally, the arbitrators had allocated the entire 25 percent to Nadjatollah. After noting Nadjatollah's objections, the arbitrators wrote the change was a clarification and elaboration within the scope of their authority, because it shows the names of all the co-owners "consistent with the ownership interest as reflected in the grant deed."

In June 2004, respondents filed a petition in superior court to confirm the arbitration award. They asserted that appellants "have refused to comply with any

---

[1] The deed lists the co-owners and their respective interests as: Behrooz Faridian (35 percent); Behzad Faridian (10 percent); Alaeddin Enayati (5 percent); Nadjatollah Enayati (9 percent); Sorraya Faridian (10 percent); Hesameddin Enayati (6 percent); Sirous Setareh (9 percent); Mahvash Rezvanipoor (10 percent); Moin Setareh (3 percent); and Adib Setareh (3 percent). In October 1986, Adib Setareh quitclaimed his interest to Sirous Setareh.

portion of the arbitration award." Appellants did not dispute the court's power to confirm the arbitration award; however, they asked the court to confirm the original award without any of the subsequent corrections or amendments made by the arbitrators. Alternatively, they asked the court to vacate the award in its entirety because the arbitrators exceeded their authority.

On August 2, 2004, the trial court confirmed the amended arbitration award. The court did not award attorney fees, finding that the arbitrators exceeded their authority by writing an attorney fees clause into their award because attorney fees were not part of the parties' arbitration agreement. Disregarding the attorney fees clause did not affect the merits of the award. Judgment was entered on the arbitration award on October 14, 2004. The judgment recites the percentage interests of all nine of the Property co-owners. No appeal was taken from the judgment.

In November 2004, respondents attempted to enforce the judgment. The trial court issued writs of execution against appellants Nadjatollah and Hesameddin Enayati in December 2004. In January 2005, upon the parties' stipulation, the court appointed a receiver to take possession of, manage, and sell the Property.

In October 2005, the receiver filed a motion asking the court to approve the sale of the Property; to authorize the receiver to complete the sale; to direct the owners to execute the grant deeds and other necessary documents; to instruct the receiver regarding credits for and charges against Nadjatollah's interest; to instruct the escrow holder; and to discharge all liens and encumbrances. The receiver planned to sell the Property to Nadjatollah for $3,799,140.

Nadjatollah opposed the receiver's motion, arguing that the total purchase price was $2,459,944, once he was given proper credits of 35.25 percent (which in his view included Sorraya's 10 percent interest in the Property). Respondents and the receiver disputed this figure. In December 2005, the trial court granted the receiver's motion to approve the sale of the Property to Nadjatollah. Escrow did not close on the date set by the court; accordingly, on February 10, 2006, the court deemed Nadjatollah to be in default and terminated his right to purchase the Property. The receiver was directed to

solicit independent buyers for the Property. In April 2006, the court approved a sale of the Property to a third party for $3.5 million.

In October 2007, the receiver submitted his final report and account to the trial court. In response, appellants: (1) asked the court to order the receiver to retain a disputed portion of the sale proceeds pending the outcome of Nadjatollah's appeal in a quiet title action relating to the Property; (2) did not contest the receiver's claim for fees and expenses; and (3) asked the court to credit Nadjatollah for his $100,000 deposit to purchase the Property because respondents wrongfully prevented him from completing the purchase. Respondents opposed appellants' request to delay full distribution of the sale proceeds.

The court approved the receiver's final report on November 14, 2007. The receiver was awarded his fees and expenses, and Nadjatollah was awarded a management fee of $240,100. The court distributed the proceeds from the sale of the Property to the co-owners. A timely appeal was taken from the order approving the receiver's final report and account.

DISCUSSION

Judgment was entered on the arbitration award on October 14, 2004. The judgment was an appealable order. (Code Civ. Proc., § 1294, subd. (d).) No appeal was taken from the judgment. After judgment was entered, the court appointed a receiver to assist the court and the parties in carrying out the terms of the judgment, because the parties could not successfully manage or sell the Property themselves, without an intermediary. The receiver carried out the terms of the judgment, and he was discharged. The court's approval of the receiver's final report and account is a "special order" made after judgment in an arbitration case, which is appealable. (Code Civ. Proc., § 1294, subd. (e).)

After specifying that the appeal is from the order approving the receiver's final report and account, appellants' brief instead challenges the merits of the 2004 arbitration award. The table of contents in appellants' brief tells the tale. It states, "Judge Ferns Should Have Denied the Petition to Confirm the Arbitration Award as Amended." This

is followed by seven subheadings, all relating to the arbitrators' amendment of their award.

Appellants voiced their dissatisfaction when respondents brought a petition in the trial court to confirm the arbitration award. They successfully challenged one of the amendments to the award, which added an attorney fees clause. The trial court found that the addition of an attorney fees clause exceeded the powers of the arbitrators. In all other respects, the amended award was confirmed and judgment was entered on it. If appellants were dissatisfied with the judgment, they had a right to appeal it.

At this late date, five years after judgment, we cannot review the propriety of the arbitration award, or any amendments to the arbitration award, or the judgment entered on the award. During this entire period, appellants have proceeded as if the judgment was valid: they stipulated to the appointment of a receiver to carry out the terms of the judgment; Nadjatollah exercised his right of first refusal to purchase the Property; then the receiver sold the Property after Nadjatollah defaulted, and appellants received the proceeds from the sale of the Property. We are not authorized "to review any decision or order *from which an appeal might have been taken*." (Code Civ. Proc., § 1294.2, italics added.) The judgment is a decision from which an appeal might have been taken. (Code Civ. Proc., § 1294, subd. (d).) We cannot revisit what occurred—and what could have been appealed—five years ago.

Appellants' belated challenge to the 2004 arbitration award and ensuing judgment cannot be entertained. Deeming this a "collateral attack," which it is not, does not save appellants. This is simply an untimely appeal from the judgment; therefore, we lack jurisdiction to review it. With respect to the order approving the receiver's final report and account, appellants offer no argument. Trial court rulings that are not challenged in the appellate opening brief are deemed abandoned or waived. (*Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 607, fn. 1; *Kurtz v. Kurtz* (1961) 189 Cal.App.2d 320, 328.) We summarily reject the appeal because appellants fail to show that anything is wrong with the court order approving the receiver's report.

While the receivership was in place to manage and sell the Property, Sorraya instituted this lawsuit against her husband, Nadjatollah. The dispute centers on Sorraya's 10 percent ownership interest in the Property. Sorraya and Nadjatollah are the parents of Alaeddin Enayati (Alaeddin) and Hesameddin Enayati (Hesameddin).

When the parties took title to the Property in 1986, the grant deed specified that Sorraya acquired a 10 percent interest as her sole and separate property. (See fn. 1, *ante*.) Sorraya and the other co-owners signed the promissory note for $657,237, which financed their purchase of the Property. Nadjatollah and Sorraya each signed mutual quitclaim deeds in connection with the purchase of the Property: the purpose of the quitclaims was to establish that Sorraya's and Nadjatollah's interests were their sole and separate property, not community property.

On August 20, 1986, shortly after she acquired her interest in the Property, Sorraya executed a quitclaim deed transferring her interest to Nadjatollah; she received no consideration for this transfer. Nadjatollah secreted the quitclaim deed, and did not record it until October 25, 2004, 18 years after it was signed. Alaeddin testified that Sorraya never intended to convey her interest in the Property to Nadjatollah: she did not read English and did not understand the quitclaim deed transferring her interest to Nadjatollah. Nadjatollah agreed that Sorraya knew "very little" English. On January 26, 2005, Sorraya executed a quitclaim deed and assigned all of her interest in the Property to Alaeddin.

Sorraya filed suit to quiet title to the property on February 3, 2005. In her lawsuit, Sorraya asked the court to cancel the August 1986 quitclaim deed transferring her interest in the Property to Nadjatollah. In her verified complaint, she alleged that in 1986, she was a recent immigrant from Iran and did not read or speak English with any degree of proficiency. If she signed the quitclaim deed, she was unaware of its meaning or legal effect, and never intended to convey any portion of her interest in the Property to Nadjatollah. Between August 1986 and October 2004, Nadjatollah acknowledged that Sorraya was an owner of the Property, and a judgment was entered in the arbitration case

confirming Sorraya's 10 percent interest in the Property. The lawsuit asserts that Nadjatollah is now attempting to dispossess Sorraya of her interest by recording an invalid deed.

Sorraya died from the complications of cancer on February 11, 2005, one week after filing this lawsuit. Hesameddin testified that Sorraya was hospitalized in failing health in January 2005. However, Sorraya's oncologist testified that she was "alert" and "oriented" on January 26, 2005, the day she assigned her interest in the Property to Alaeddin.

Sorraya was a patient of neurologist Cyrus Mody in January 2005. Dr. Mody testified that on January 26, 2005, Sorraya was feeling unwell, listless, dispirited, and not completely oriented because she did not know what the date was; however, he wrote in the hospital chart that she was "alert, awake, oriented times three, except for date." Dr. Mody agreed that "as far as her mental condition, she was alert," was responsive to questions and could talk to him. He did not believe that Sorraya could hold a pen, although she mostly had extreme lack of strength from the waist down, due to colon cancer.

Testimony was given by Bahran Ganjineh, who is a certified court interpreter. Ganjineh was called to Cedars-Sinai on January 26, 2005, to interpret English into Farsi for Sorraya. Ganjineh asked Sorraya, "This document here, you are transferring your share of interest in the property to your son here; is that right?" Sorraya replied, "Yes." Ganjineh described Sorraya as "very intellectually in touch." Ganjineh translated the entire complaint in this lawsuit to Sorraya, sentence by sentence, asked if she understood, and she signed the verification. Ganjineh then interpreted the assignment and the quitclaim deed. Sorraya indicated that she understood them, and signed them. A Farsi-speaking notary public was present during the entire transaction, and notarized the documents that Sorraya signed after they were translated.

A document examiner for Nadjatollah, Donald Fandry, examined the notary's book, the assignment, the quitclaim deed, and the verification of the complaint. He compared them to exemplars of Sorraya's signature, which were given to him by

Hesameddin. He did not obtain an exemplar that was signed by Sorraya in front of a government official, such as a driver's license. In his opinion, Sorraya was not responsible for the questioned signatures. Fandry agreed that if someone has a health problem, there may be wide variation in the person's signature.

Sorraya did not tell her husband that she was going to sue him and quitclaim her interest to Alaeddin. Alaeddin did not tell Nadjatollah or any of his siblings that he was going to meet with Sorraya, an interpreter, and a notary public, in order for Sorraya to assign her interest in the Property to him. After Sorraya's death, Alaeddin stepped into her place as the plaintiff in this lawsuit, due to the January 2005 assignment from Sorraya giving Alaeddin all of her right, title and interest in the Property. Alaeddin argued that as the assignee, he has the right to maintain suit in his own name.

At the outset of the trial, the court requested briefing on the issue of res judicata, with respect to the 2004 arbitration judgment. After reviewing the court file in the arbitration case, the court found that the arbitration judgment "is res judicata on the issue of ownership by Sorraya Faridian of the 10% undivided interest" in the Property. Further, the validity of Sorraya's August 20, 1986, quitclaim deed in favor of Nadjatollah "could have been and should have been litigated" in the arbitration action "by reason of the fact that the issue of the ownership interest of all record owners of the property was the specific subject of the litigation in that case." During the court proceeding to confirm the arbitration award, Nadjatollah "did in fact claim" that Sorraya's share of the proceeds from the sale of the Property should be delivered to him, but his claim was rejected. The court cancelled Sorraya's August 1986 quitclaim purporting to transfer her interest in the Property to Nadjatollah.

After invalidating Sorraya's August 1986 quitclaim deed to Nadjatollah, the court went on to address the validity of Sorraya's 2005 transfer of her interest in the Property to Alaeddin. The court found the assignment and quitclaim deed from Sorraya to Alaeddin valid and binding: Sorraya had the mental and physical capacity to execute these documents and was not subjected to undue influence by Alaeddin. The court wrote that it

found the testimony of Alaeddin's witnesses more credible than the testimony of Nadjatollah and his witnesses.

In a judgment filed on December 4, 2006, the court cancelled the quitclaim deed recorded by Nadjatollah on October 25, 2004, and it quieted title in favor of Alaeddin to an undivided 10 percent interest in the Property. Appeal was taken from the judgment on February 1, 2007.

DISCUSSION

1. Res Judicata Effect Of The Arbitration Judgment

Appellant Nadjatollah argues that respondent waived his right to assert res judicata because the existence of the arbitration judgment was not pleaded. "When a judgment or order of a court is conclusive, the judgment or order must be alleged in the pleadings if there be an opportunity to do so; if there be no such opportunity, the judgment or order may be used as evidence." (Code Civ. Proc., § 1908.5.) In the first amended complaint, respondent alleges that "a judgment was issued [in the arbitration confirmation proceeding] which confirmed to Sorraya Faridian her interest in the Property. A true and complete copy of said judgment is attached hereto . . . and made a part hereof by this reference." The judgment was properly pleaded, for res judicata purposes.

Contrary to appellant's claim, he was not "blindsided" when the trial court reached the issue of res judicata. Respondent pleaded the existence of the arbitration judgment in his complaint. In his trial brief, respondent asserted that the prior judgment is res judicata. The court and counsel discussed res judicata at great length during a hearing on March 28, 2006. The court offered Nadjatollah an opportunity to brief the issue of res judicata. The court inquired what would happen "*if* the court were to determine" that the arbitration judgment "is controlling." (Italics added.) The court's mind was not made up at that point. On May 2, 2006, Nadjatollah filed a brief in the trial court addressing the issue of res judicata. At a hearing on June 27, 2006, Nadjatollah complained that the issue of res judicata "came out of left field." The court replied that this was a legal issue that was raised at the beginning of trial, and the lawyers were afforded "as much time as they wanted" to brief the matter. After multiple hearings and briefing on the issue of res

judicata, appellant cannot reasonably claim surprise that the trial court applied res judicata, nor was he deprived of an opportunity to address the issue in writing and in oral argument.

Appellant asserts that respondent failed to meet his burden of proving that the parties' ownership interests in the Property were actually litigated in the arbitration proceeding. This is incorrect: the parties' interests were a point of contention in the arbitration proceeding. The original award combined the interests of Nadjatollah, Sorraya, and Hesameddin. Over Nadjatollah's objections "directly and through his attorneys," the arbitrators amended their award to show ownership percentages "consistent with the ownership interest as reflected in the grant deed."

In the trial court, appellant challenged the arbitrators' power to amend the award, with partial success. The court's judgment spells out the individual percentage interests of all of the co-owners, for purposes of distributing the proceeds from the sale of the Property. The judgment allocated 9 percent to Nadjatollah, 10 percent to Sorraya, and 6 percent to Hesameddin.

Thus, Nadjatollah had two opportunities to contest the allocation of the co-owners' interests in the Property. First, he contested it personally and through his lawyers in front of the arbitrators. Second, he contested it in the trial court after a petition was brought to confirm the award. If Nadjatollah believed that the arbitration and ensuing arbitration judgment were unfair, because they indicated the percentages of the parties' interests, he had to timely appeal the judgment to challenge the fairness of the judgment and the allocation of ownership. He did not do so, and the judgment became final and binding as to the parties' interests in the Property.

Nadjatollah never produced the purported quitclaim deed from Sorraya, transferring her interest to him, at any point during the arbitration proceeding or the court proceeding. Without any proof that Sorraya had deeded her interest to Nadjatollah, the arbitrators and the trial court had no choice but to divide the sale proceeds in the percentages stated in the 1986 grant deed, by which the parties acquired the Property. Nadjatollah produced and recorded Sorraya's purported quitclaim deed *after* the

arbitration and the court proceedings were concluded. Having kept the quitclaim hidden throughout the proceedings, Nadjatollah cannot complain now that he was deprived of an opportunity to contest Sorraya's 10 percent ownership interest in the Property.

Appellant argues that the trial court misapplied the laws governing deeds and transfer of title to real property. He maintains that "[d]elivery of a deed from a wife to her husband immediately vests title in him, regardless of whether or when he records it." The trial court did not discuss whether Sorraya's quitclaim deed vested title in Nadjatollah, even if he did not record the deed until 18 years after it was executed. The court found that this issue "*could have been and should have been litigated*" in the arbitration action "by reason of the fact that the issue of the ownership interest of all record owners of the property was the specific subject of the litigation in that case." (Italics added.) Because Nadjatollah did not produce his quitclaim deed at any point during the arbitration proceeding or the court action that followed the arbitration, he lost his right to claim Sorraya's 10 percent interest as his own, under principles of res judicata.

2. <u>Verification Of The First Amended Complaint</u>

Appellant contends that the verification of the amended complaint is invalid because respondent averred, "I have read the foregoing First Amended Complaint and know its contents. I am a party to this action. The matters stated in the foregoing document are true, on information and belief, of my own knowledge and I believe them to be true." A verification of a pleading "shall state that the same is true of his own knowledge . . . ." (Code Civ. Proc., § 446.)

After appellant challenged Alaeddin's verification in a motion to strike the cause of action to quiet title, the trial court ruled that the verification was valid though based "on information and belief" instead of "personal knowledge." The court's ruling was correct. Alaeddin took Sorraya's interest in the Property by assignment. A party who takes an interest by assignment may verify the complaint "on information and belief" so long as the verification indicates that the affiant has read the complaint, knows the contents thereof, and the contents are true. (*Bittleston Law etc. Agency v. Howard* (1916)

172 Cal. 357, 358-359.) In any event, Code of Civil Procedure section 446 requires only that an affiant state that the matters are true "of his own knowledge." Respondent's verification meets this requirement.

3. Sorraya's Interest Was Not Community Property

Nadjatollah argues that the August 1986 mutual quitclaim deeds meant that Sorraya did not have an undivided interest she could convey to Alaeddin in 2005. In fact, just the opposite is true. In his quitclaim, Nadjatollah granted Sorraya her 10 percent interest as her sole and separate property; in her quitclaim, Sorraya granted Nadjatollah his 9 percent as his sole and separate property. The mutual quitclaim deeds established the intention of Sorraya and Nadjatollah to hold their interests *outside* of the community. As a result, Sorraya had an undivided, noncommunity interest she could convey to Alaeddin in 2005.

Nadjatollah claims that Sorraya's 10 percent interest is community property, as a matter of law. Property acquired during marriage "by gift, bequest, devise, or descent" is separate property. (Fam. Code, § 770, subd. (a)(2).) Each mutual quitclaim deed reads, "This is a bonafide gift and the grantor received nothing in return." Although the Property was purchased during the marriage, Sorraya and Nadjatollah mutually gave away their community interests, so that each could hold title as their sole and separate property. It has long been held that a husband may make a voluntary gift to his wife of his interest in real or personal property acquired during marriage, which becomes her separate property. (*Peck v. Brummagim* (1866) 31 Cal. 440, 446-447.) "[M]arried persons may by agreement or transfer, with or without consideration," transmute community property into separate property of either spouse. (Fam. Code, § 850.) In this instance, the Property was not community property, in accordance with the wishes of Sorraya and Nadjatollah, who voluntarily ceded their community interests to each other by way of a transfer.

4. Evidentiary Rulings

a. Testimony of Dr. Nassir

The trial court allowed Sorraya's oncologist, Dr. Nassir, to testify as a percipient witness regarding Sorraya's physical and mental condition. Because of scheduling problems, Dr. Nassir served as a rebuttal witness to Nadjatollah's claim that Sorraya was incompetent *before* Nadjatollah put on any evidence regarding Sorraya's mental state. The trial court accepted that Dr. Nassir's testimony be taken out of order. It was permissible for the trial court to grant this kind of latitude: we note that the court also allowed Nadjatollah to call *his* witness, Dr. Pedram Enayati, out of order when Dr. Enayati (Sorraya's grandson) showed up at the same time as Dr. Nassir.

Appellant argues that Dr. Nassir should not have been allowed to testify because his testimony was based on hearsay, i.e., medical records from Cedars-Sinai, where Sorraya was hospitalized in January 2005. Hospital and medical records are hearsay, but are admissible under the business records exception to the hearsay rule, if properly authenticated. (*Garibay v. Hemmat* (2008) 161 Cal.App.4th 735, 742.) Respondent did not authenticate the hospital medical records because he did not seek to have them admitted into evidence.

Instead, Dr. Nassir reviewed Sorraya's hospital medical chart before trial to refresh his recollection about her condition in January 2005. Dr. Nassir was Sorraya's "primary oncologist, taking care of her situation," seeing her at the hospital "not on a daily basis, but most days." As Sorraya's personal physician, Dr. Nassir could use her medical chart to refresh his recollection about her condition, either while testifying or prior thereto. (Evid. Code, § 771, subd. (a); *Brown v. Affonso* (1960) 185 Cal.App.2d 235, 237-239; *People v. Smith* (2007) 40 Cal.4th 483, 509.) Dr. Nassir's use of the chart to refresh his recollection does not present a hearsay problem. Indeed, Nadjatollah's witness, Dr. Mody, used the same medical charts to refresh his recollection when testifying.

b. Nadjatollah's Transformation Defense

In his answer, Nadjatollah alleged that the Property "was transformed into community property which cannot be transferred or assigned to Alaeddin Enayati or any other person or entity without the knowledge and consent of [appellant] and therefore any such transfer or assignment is void." At trial, Nadjatollah argued that he used community efforts to manage the Property for almost 20 years, thereby transforming it into community property. Respondent countered that Sorraya and Nadjatollah executed mutual quitclaim deeds, each relinquishing their community interest in the other's share of the Property.

Nadjatollah's counsel twice asked for an opportunity to brief "this issue of the transmutation," and the court agreed to his request. At the next hearing, Nadjatollah's counsel attempted to argue "transformation" while Alaeddin's counsel addressed "transmutation." The court read aloud the prior day's transcript, pointing out that Nadjatollah asked to brief "transmutation."

At the outset, we observe that Nadjatollah's defense is subsumed into the res judicata ruling. The extent of Sorraya's interest in the Property was resolved by the arbitrators, confirmed by the trial court in the arbitration judgment, and the matter is settled. Both of the cases cited in Nadjatollah's trial court brief have to do with equitable apportionment, not "transformation." In those cases, the court said that when a husband owns a separate property business and devotes his efforts to the enterprise, there must be an apportionment of the profits entitling the community to a share of the profits generated by the husband's business. (*In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 850-852; *Estate of Neilson* (1962) 57 Cal.2d 733, 740-741.) The cases cited to the trial court do not stand for the defense claimed by Nadjatollah, i.e., that his efforts "transformed" Sorraya's separate property into community property. As a result, the trial court did not abuse its discretion by refusing to hear evidence about "transformation."

c. Hesameddin's Testimony

Appellant complains that the trial court improperly limited his questioning of Hesameddin. Hesameddin was an obstreperous witness, and was admonished several

times. Nevertheless, Nadjatollah's counsel asked all of the questions he wanted on direct, concluding with "Your Honor, I think that's all I have." After a very brief cross-examination, the court promptly ended redirect examination after Hesameddin answered a question rudely. Not much more information would have been elicited on redirect, and since Nadjatollah was able to ask all the questions he wanted on direct, we see no abuse of discretion.

d. Undue Influence

Appellant contends that he was prevented from introducing evidence of Alaeddin's undue influence. We have reviewed the entire record. Appellant presented considerable evidence regarding Sorraya's mental and physical condition. We do not see how appellant was curtailed in the presentation of his evidence. Further, we do not see that the trial judge "showed favoritism" toward Alaeddin.

In its statement of decision, the trial court specifically cited two witnesses as being particularly credible. First, the court believed the testimony of Bahran Ganjineh, who interpreted the complaint, the deed and the assignment into Farsi for Sorraya, and testified that Sorraya was alert and "intellectually in touch" at the time she signed these documents. Second, the court believed the testimony of the notary public, who communicated with Sorraya in her native Farsi language. After the documents were read to Sorraya in Farsi by Mr. Ganjineh, the notary told Sorraya that this was a quitclaim deed, and asked "Do you want to sign it or not," and Sorraya replied "Yes." Sorraya then signed the documents and the notary's book.

The court did not believe the testimony of Hesameddin, Donald Fandry, Cyrus Mody, or Pedram Enayati. In a court trial, the trial court is the sole trier of witness credibility. We must accept the court's findings that some witnesses were believable, and others were not. The court did not tend to believe the testimony of family members, whose testimony was emotional and biased. Based on the testimony, the court found that Sorraya had the requisite mental capacity to execute the deed and assignment to Alaeddin, and the medications she was taking did not interfere with her mental capacity. The court believed the notary public's testimony that Sorraya held the pen and

signed the documents and the notary book, even if Dr. Mody did not feel that Sorraya was strong enough to hold a pen. Further, the court found from the testimony that Sorraya was not subjected to undue influence but acted voluntarily and with full understanding of her actions. The court's conclusions are supported by substantial evidence.

5. Alaeddin's Interest In The Olive Street Parcel

The Property is comprised of two adjacent parcels, one on Olive Street and one on Pico Boulevard. Appellant contends that Sorraya only transferred her interest in the Pico parcel to Alaeddin. In the assignment, Sorraya gave Alaeddin her interest in "the real property commonly known as 316 and 316 1/2 West Pico Boulevard, Los Angeles, California, *and legally described on Exhibit 'A' attached hereto and made a part hereof by this reference*." (Italics added.) By incorporating by reference the legal description comprising *both* parcels, Sorraya's assignment validly conveyed her entire interest to Alaeddin. Substantial evidence supports the trial court's finding that "the legal descriptions attached to the Quitclaim Deed and the Assignment" fully describe the Pico and the Olive parcels that Sorraya intended to convey to Alaeddin.

DISPOSITION

The judgments are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.